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REGION III  
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OCT 15 1997

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Re: Morgantown OUI: Focused Feasibility Consent  
Order (EPA Docket No. III-97-110-DC)

Dear Counsel:

Enclosed please find a true and correct copy of the Consent Order. Pursuant to Section XXVII thereof, the effective date of the Consent Order is Monday, October 20, 1997.

Please do not hesitate to contact me at (215) 566-2487 if you have any questions concerning this matter.

Respectfully,

ANDREW S. GOLDMAN  
Sr. Assistant Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:	:
	:
ORDNANCE WORKS DISPOSAL AREAS	:
SUPERFUND SITE	: EPA Docket No.
	:
Olin Corporation; Rockwell	: III-97-110-DC
International Corporation;	:
EPEC Polymers, Inc.; and	:
General Electric Company;	:
	:
Respondents	:
	:
	:
Proceeding under Sections 104	:
and 122 of the Comprehensive	:
Environmental Response,	:
Compensation, and Liability Act	:
of 1980, as amended, 42 U.S.C.	:
§§ 9604 and 9622	:

**ADMINISTRATIVE ORDER ON CONSENT**  
**FOR FOCUSED FEASIBILITY STUDY**  
**AND ORDER SUSPENDING REQUIREMENTS UNDER**  
**ADMINISTRATIVE ORDER NO. III-90-27-DC**

The parties to this Administrative Order on Consent ["Consent Order"], Olin Corporation; Rockwell International Corporation; EPEC Polymers, Inc. (formerly known as Tenneco Polymers, Inc.); and General Electric Company ["Respondents"] and the U.S. Environmental Protection Agency ["EPA"], have agreed to the issuance of this Consent Order, and the Respondents agree to undertake all actions required by this Consent Order. This Consent Order concerns the preparation of, performance of, and reimbursement for all costs incurred by EPA in connection with a Focused Feasibility Study ["FFS"] for Operable Unit No. 1 ["OU1"] of the Ordnance Works Disposal Areas Superfund Site ["Site"] in Morgantown, Monongalia County, West Virginia. It is therefore ordered that:

## I. JURISDICTION

- A. This Consent Order is issued pursuant to the authority vested in the President of the United States by sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ["CERCLA"], 42 U.S.C. §§ 9604 and 9622, and delegated to the Administrator of the EPA on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2926, and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C.
- B. The Respondents consent to and will not contest EPA jurisdiction regarding this Consent Order.

## II. STATEMENT OF PURPOSE

- A. In entering into this Consent Order, the mutual objective of EPA and Respondents is to fully perform a Focused Feasibility Study ("FFS") for OUI of the Ordnance Works Disposal Areas Superfund Site, as hereinafter described. The FFS shall determine and evaluate (based on treatability testing, where appropriate) alternatives to and modifications of the remedy selected in the Record of Decision signed by EPA on September 29, 1989 ("ROD"). These alternatives or modifications of the remedial action selected in the ROD shall prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from OUI of the Site consistent with the risk assessment (including any adverse impacts to human health or the environment that may result from the activities associated with remediation). Relevant data collected during the RI/FS and remedial design studies at the Site shall be utilized to determine and evaluate alternatives in the FFS. Alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the National Oil and Hazardous Substances Pollution Contingency Plan ["NCP"], 40 C.F.R. Part 300, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, the Respondents shall address the factors required to be taken into account by section 121 of CERCLA, 42 U.S.C. § 9621, and section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e).
- B. The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be conducted in compliance

with all applicable EPA guidances, policies, and procedures. Respondent shall not be responsible for preparing a Risk Assessment as set forth in EPA's RI/FS guidance.

- C. The activities conducted under this Consent Order shall provide all necessary information for selection of a remedial action that is consistent with CERCLA and the NCP.

### III. FINDINGS OF FACT

- A. The Ordnance Works Disposal Areas Site ("Site") is located in Monongalia County on the west bank of the Monongahela River approximately one mile south of the City of Morgantown, West Virginia ("Morgantown"). The Site consists of numerous tracts of land containing approximately 800 acres purchased by E.I. DuPont de Nemours & Company ("DuPont") between 1940-1943 pursuant to agreements between DuPont and the United States of America. These agreements additionally provided for the construction and operation of manufacturing facilities. A small portion of this land was used as a disposal ground during operations and later became known to EPA as Operable Unit No. 1 ("OU1") of the Site. The remaining portion of the Site containing, among other things, the manufacturing facilities, is known to EPA as Operable Unit No. 2 ("OU2") of the Site.
- B. OU2 has contained active chemical production facilities since the 1940's. Between 1943 and 1962, the United States held legal title to these facilities. Between 1941 and 1958, various operations were conducted by private parties, in some cases pursuant to government contracts and operating agreements, and in other cases pursuant to commercial leases. During this time, the facilities were used to produce, among other substances, hexamine, ammonia, methyl alcohol, formaldehyde, ethylene diamine, and coke. As a result of manufacturing operations conducted by others under agreements and leases with the United States, hazardous substances were generated and subsequently disposed at, among other places, OU1 of the Site.
- C. Pursuant to various agreements and contracts with the United States, DuPont acquired legal title to the Site in stages beginning in October 1940, and proceeded to construct and operate chemical production facilities at OU2 for the war effort between October 1940 and 1945. Under those agreements and contracts, DuPont transferred legal title to the Site to the United States in December 1943. Between approximately

1940-1945, DuPont operated manufacturing facilities at OU2 which produced, among other substances, ammonia, methanol, formaldehyde, hexamine, ethylene diamine, light oils, and tars.

- D. Between 1951 and 1958, Respondent Olin operated manufacturing facilities at OU2 which produced, among other substances, methanol, formaldehyde, ethylene diamine, hexamine, ammonia, light oils, and tars.
- E. Between 1946 and 1950, Heyden Chemical Corporation operated the ammonia manufacturing plant at OU2. For this Consent Order only, Respondent EPEC Polymers has agreed to assume the obligations of Heyden Chemical Corporation.
- F. As a result of the above-described operations, waste streams were generated and disposed of at OU1 of the Site. Those waste streams contained hazardous substances.
- G. Between 1962 and 1978, the Site was owned by Morgantown Ordnance Works, Inc. During that time, Morgantown Ordnance Works, Inc. leased and/or sold portions of OU2 for various industrial and chemical manufacturing activities. In 1964, Weston Chemical Company ("Weston") purchased a small parcel within OU2 from Morgantown Ordnance Works, Inc. Weston subsequently expanded its operations within OU2. This expansion continued after 1969, when Borg-Warner Corporation ("Borg-Warner") purchased Weston, with the result that Borg-Warner ultimately operated two plants and laboratories on company-owned property amounting to approximately 62 acres within OU2. In 1988, General Electric Company ("GE") purchased Borg-Warner's operations at OU2. The GE facilities are currently active. Wastes produced by Weston and/or Borg-Warner which contained hazardous substances were disposed of at OU1 of the Site.
- H. Except for parcels previously sold, the Site was acquired by Princess Coals, Inc. in 1978.
- I. In 1982, the Site was purchased by private individuals who later formed Morgantown Industrial Park, Inc. In 1983, the property was conveyed to Morgantown Industrial Park Associates, Limited Partnership ("MIPA"), the current property owner.
- J. In April 1983, EPA performed a site inspection at OU1 of the Site. The OU1 area was believed to be a former waste disposal and handling area used by the former tenants of industrial facilities located in OU2 of the Site. The OU1 areas investi-

gated included a former landfill, waste lagoons, a "scraped" area, and a drum staging area. The inspection revealed several drums containing polychlorinated biphenyls ("PCBs"); sediments collected from the scraped and landfill areas containing polynuclear aromatic hydrocarbons ("PAHs") at concentrations exceeding 100 ppm; blue pellets collected from the surface of the former landfill containing zinc and copper; and a yellow solid material collected from the scraped area that contained sulphur. Air monitoring results provided no indication of OU1-related airborne hazardous substances.

- K. Between May and June 1984, MSES Consultants, Inc. ("MSES"), under contract to MIPA, performed additional sampling of all drums and subsequently disposed of most of the drums at an off-site facility.
- L. In July 1984, EPA performed follow-up sampling to determine the effectiveness of the MIPA response work. Soils in the former drum staging area were found to contain concentrations of PCBs between 6 and 229 ppm; surface soils collected from the landfill and scraped areas and sediments collected adjacent to these areas contained PAHs at concentrations exceeding 700 ppm and 250 ppm, respectively; and inorganic substances such as arsenic, lead, nickel, zinc, chromium, copper, and mercury were identified in concentrations exceeding background levels in surface soils collected from the landfill and scraped areas.
- M. In October 1984, MIPA removed PCB-contaminated soils from the former drum staging area and disposed of these soils at a licensed off-site facility.
- N. OU1 of the Site was promulgated to the CERCLA National Priorities List ("NPL") on June 6, 1986.
- O. In March 1985, EPA initiated a Remedial Investigation and Feasibility Study ("RI/FS") which focused primarily on contamination within OU1.
- P. The OU1 RI/FS report, issued in January 1988, documented the release and threatened release of hazardous substances, pollutants, and/or contaminants in the landfill, scraped area, and former lagoon areas within OU1.
- Q. On September 29, 1989, EPA issued a ROD selecting a "preferred" and "contingency" remedial action for OU1 of the Site. The "preferred" remedial action involved, among other things, excavation and treatment of inorganic hotspots from the lagoon and scraped areas; disposal of treated inorganic contaminants

- at the former landfill area; capping the former landfill; and excavation and treatment of organics-contaminated soils and sediments using bioremediation. The "contingency" remedial action calls for treatment of soils and sediments using soil washing technology.
- R. On June 20, 1990, EPA issued an administrative order corresponding to EPA Docket No. III-90-27-DC directing Olin Corporation, Rockwell International Corporation, General Electric Company, and Morgantown Industrial Park Associates to implement the ROD.
- S. EPA approved the a work plan submitted by Olin Corporation for bioremediation treatability studies in January 1993. Initial slurry-phase bioremediation treatability studies were not conclusive and supplemental slurry tests were performed. The supplemental slurry tests were followed by solid-phase treatability testing. A report on the solid phase tests was submitted by Olin Corporation in March 1997. This report indicates that bioremediation has the potential to treat Site contaminants to achieve the cleanup standards and recommends that a field pilot test be conducted.
- T. The contingency remedy selected in the 1989 ROD called for soil washing of all onsite contaminated soils, along with capping of the landfill and institutional controls. Olin Corporation preliminarily evaluated this contingency remedy and concluded that it would be ineffective or infeasible on Site soils for reasons including, among others, the large fraction size of CPAH contaminants at the Site and the increase in the volume of hazardous substances that would result from the addition of water and solvents to the contaminants.
- U. EPA has determined that there is a high degree of uncertainty regarding the ability of bioremediation to meet the cleanup standard in an expeditious manner. The field pilot test recommended in Olin Corporation's March 1997 report would take a year before any meaningful information relating to site-specific bioremediation capabilities were known. EPA has determined that the time required to evaluate the viability of bioremediation would be better spent investigating more aggressive remedial alternatives which may meet the current cleanup standards in a more expedient time frame.

#### IV. CONCLUSIONS OF LAW

- A. The Ordnance Works Disposal Areas Superfund Site, including OU1, is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. "Hazardous substances", as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) have been disposed of at the Site, including OU1, and are currently present there.
- D. The presence of hazardous substances at OU1 of the Site, and the past, present, and/or potential migration of hazardous substances at or from OU1 of the Site constitutes an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- E. The Respondents are liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

- A. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.
- B. EPA has determined that the Respondents are qualified to conduct the FFS within the meaning of section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the work properly and promptly if the Respondents comply with Section VIII of this Consent Order.

#### VI. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA, upon Respondents and their successors and assigns, and upon all persons, contractors and consultants acting under or for the Respondents. No change in ownership or corporate or partnership status of the Respondents or the Site will in any way alter the Respondents' obligations under this Consent Order.



- B. In the event of any change in ownership or control of any Respondent, such Respondent shall notify EPA in writing, no later than five (5) business days prior to the change, of the nature of the change and the anticipated date of the change. Such Respondent shall provide a copy of this Consent Order to its successors before the proposed change becomes irrevocable.
- C. The Respondents shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, consultants, and supervisory personnel retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order or on their date of retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for complying with this Consent Order and for ensuring that their contractors, subcontractors, laboratories, consultants, supervisory personnel, and agents comply with this Consent Order.
- D. All obligations imposed by this Consent Order are joint and several. The failure by one or more of the Respondents to comply with all or any part of this Consent Order shall not in any way excuse or justify noncompliance by any other Respondent.

#### **VII. NOTICE TO THE STATE**

EPA is notifying the State of West Virginia (the "State") that this Consent Order is being issued by providing a copy to the State.

#### **VIII. WORK TO BE PERFORMED**

- A. Respondents shall perform an FFS for the Site in accordance with the requirements of CERCLA, the NCP, this Consent Order (including any EPA-approved documents submitted as a requirement of this Consent Order), and relevant guidance documents.
- B. All response work performed pursuant to this Consent Order shall be under the direct supervision of qualified personnel.
  - 1. Within ten (10) calendar days after the effective date of this Consent Order, Respondents shall notify EPA in writing of the identity and qualifications of the primary contractor(s) and/or supervisory personnel to be used in

carrying out the work to be performed pursuant to this Consent Order. Respondents have a continuing obligation to notify EPA of the identity and qualifications of any contractors, subcontractors, and supervisory personnel that will perform or oversee work required by this Consent Order within ten (10) calendar days after their retention.

2. EPA may, in its discretion, disapprove of the use of any contractor, subcontractor, or supervisory personnel EPA considers to be unqualified or otherwise unable to perform the work, or to continue to perform any part of the work required by this Consent Order. In the event of a disapproval, Respondents shall notify EPA within ten (10) calendar days of receipt of such disapproval of the identity and qualifications of the person, contractor, subcontractor, or supervisory personnel that will replace the one that was disapproved.
  3. In the event EPA subsequently disapproves of any replacement contractor, subcontractor, or supervisory personnel, EPA reserves the right to conduct a complete FFS, or any portion thereof, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs and/or to seek any other appropriate relief.
  4. EPA will provide a notice of acceptance of the prime contractor to the Respondents. Nothing herein shall limit EPA's right to subsequently disapprove of such contractor.
- C. 1. Focused Feasibility Work Plan. Work shall be performed in accordance with the terms, conditions, and schedule of an FFS work plan ["Work Plan"] to be submitted by Respondents for approval pursuant to Section IX of this Consent Order within sixty (60) calendar days after Respondents receives a notice of contractor acceptance from EPA. The work and Work Plan shall be consistent with the CERCLA, the NCP, this Consent Order, and with all relevant EPA guidance and regulations. The Work Plan shall include, but not be limited to:
- a. a comprehensive summary of known site conditions;
  - b. a discussion of data gaps;
  - c. methodology and logistics for obtaining information in order to meet the objectives of the FFS;

- d. format (i.e., computer disc or equivalent) for presentation and transmittal of FFS data;
- e. a preliminary listing and discussion of applicable and relevant and appropriate requirements ["ARARs"]; other advisories, criteria, and guidance to be considered pursuant to section 300.400(g)(3) of the NCP, 40 C.F.R. § 300.400(g)(3) ["TBCs"]; and a plan for refinement of ARARs and TBCs throughout the FFS process; and
- f. a strategy for identifying the need for and carrying out treatability studies, the elements of which are described in paragraph D.3 of this Section; and
- g. a schedule for expeditious completion of the FFS Report, including projected delivery dates for written reports (including draft and final FFS Reports), and for meetings with EPA to present progress information about the Site.

Upon request of Respondents, EPA will confer with the Respondents for the purpose of "pre-scoping" the Work Plan and for the discussion of or distribution of relevant EPA guidance documents and policies regarding the performance of an FFS. Any delays in the holding of such a meeting shall not excuse any delay in Respondents' obligation to comply with the project schedule.

- 2. Sampling and Analysis Work Plan. If the Work Plan approved by EPA requires the collection and analysis of samples, Respondents shall, within twenty (20) days of EPA approval of the FFS Workplan, submit to EPA for approval a Sampling and Analysis Work Plan which shall include, at a minimum:
  - a. data quality objectives;
  - b. a sampling and analysis plan (including a Field Sampling Plan and a Quality Assurance Project Plan) for all sampling to be conducted as part of the FFS;
  - c. a health and safety plan; and
  - d. a schedule for field work.

Upon approval by EPA, the Sampling and Analysis Work Plan shall be incorporated into the Work Plan.

- D. Respondents shall implement the Work Plan according to its approved terms, conditions, and schedules, and shall prepare and submit the FFS Reports for EPA's review as specified in the Work Plan and its accompanying schedule. Respondents shall prepare and submit for approval pursuant to Section IX of this Consent Order, the following:
1. A Remedial Alternatives Matrix which identifies the alternatives which are to be considered in the FFS including, among others, the preferred and contingency remedies selected in the 1989 ROD, and provides a justification for eliminating or retaining each alternative.
  2. An FFS Report which proposes an appropriate range of waste management options that are evaluated through the development and screening of alternatives. The report shall contain a comparative analysis of the remedial alternatives against the nine evaluation criteria as described in the NCP and EPA's RI/FS guidance.
  3. Treatability Studies: Respondents shall conduct treatability studies if the Work Plan approved by EPA so requires. In such event, Respondents shall provide EPA with the following deliverables:
    - a. Identification of Candidate Technologies Memorandum. Respondents shall identify candidate remedial technologies.
    - b. Treatability Testing Statement of Work. If EPA determines that treatability testing is required, Respondents shall submit a treatability testing statement of work.
    - c. Treatability Testing Work Plan. If EPA determines that treatability testing is required, Respondents shall submit a treatability testing work plan, including an expeditious schedule, sampling and analysis plan, and a health and safety plan.
    - d. Treatability Study Evaluation Report. Respondents shall submit a treatability study evaluation report.

- E. Beginning thirty (30) calendar days subsequent to the date on which the Work Plan identified in Section VIII.C of this Consent Order is approved by EPA, the Respondents shall provide EPA with a progress report for each preceding calendar month. At a minimum, these progress reports shall include:
1. a description of the actions that have been taken toward achieving compliance with this Consent Order and the tasks set forth in the approved Work Plan;
  2. all results of sampling, tests, analytical data (whether or not it has undergone Quality Assurance/Quality Control review and interpretations) and all other information received by the Respondents;
  3. a description of all data anticipated and activities scheduled for the next thirty (30) calendar day period; and
  4. a description of any problems encountered, any actions taken or to be taken to remedy or mitigate such problems, and a schedule of when such actions will be taken.
- F. The Respondents shall meet and/or consult with EPA technical representatives within ten (10) calendar days after receiving approval of the Work Plan to facilitate execution of the Work Plan. EPA may, in its discretion, waive the meeting and/or consultation if it determines that the technical issues were resolved during the pre-scoping or the scoping meetings.
- G. Reserved.
- H. EPA and Respondents recognize that, while undertaking an FFS, certain information and/or knowledge about the Site or technology or investigative methods may arise from public meetings, data collection, and other sources that may require modification to the Work Plan or to the field work. Any such modifications must be made in conformance with Section XXVI of this Consent Order.
- I. EPA reserves its right to disapprove of work performed by the Respondents and reserves its right to request that Respondents perform response actions in addition to those required by, or as modified in the approved Work Plan, if EPA determines that such actions are necessary and that Respondents are qualified and can carry out such actions properly and promptly. In the event that Respondents decline to perform such additional and/or modified actions, EPA reserves the right to undertake such action(s) and to seek reimbursement of its costs and/or

to seek any other appropriate relief.

J. EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under CERCLA and the NCP, and to seek reimbursement for any costs incurred or seek any other appropriate relief.

K. 1. A "responsible official" of each Respondent, or his/her duly authorized representative participating in the oversight of FFS activities, shall sign a certification to the final FFS report in accordance with the requirements of this provision.

2. For a corporation, a "responsible official" means a president, secretary, treasurer, vice president in charge of a principal business function, other person who performs similar policy or decision-making functions for the corporation, or, if authority to sign documents has been assigned or delegated to him/her in accordance with corporate procedures, the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3). For a partnership or sole proprietorship, "responsible official" means a general partner or the proprietor, respectively.

3. A person is a "duly authorized representative" within the meaning of this subsection only if:

(a) The authorization is made in writing by a responsible corporate official, and

(b) The authorization specifies either an individual or a position within the Respondent's organization responsible for overseeing performance of the FFS, and

(c) The written authorization has been approved by EPA prior to the certification.

4. The certification required by this provision shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete.

"As to those portions of this [type of submission] for which I cannot personally verify their accuracy, I certify that this [type of submission] and all attachments were prepared at my direction and with my review, in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete to the best of my knowledge, information, and belief.

"This certification shall not apply to information contained herein that was inserted into this [type of submission] by EPA, or was required by EPA to be inserted into this [type of submission], over my objection."

- L. 1. In the event EPA elects to perform all or any portion of the Work required by this Consent Order or to oversee performance of such Work by a party other than Respondents, EPA shall so notify Respondents in writing. Such notification ["Takeover Notice"] shall identify the Work required by this Consent Order which Respondents shall not perform ["Takeover Work"]. Upon receipt of any such Takeover Notice from EPA, Respondents shall be released from any further obligation under this Consent Order to complete such Takeover Work. Respondents shall not be released, however, from any other obligations under this Consent Order and shall specifically remain liable for, among other things:
- (a) stipulated penalties for violations of this Consent Order which occurred prior to Respondents' receipt of any such Takeover Notice; provided, however, that stipulated penalties for violations of this Consent Order relating to Takeover Work shall continue to accrue only until (1) EPA, or another party pursuant to an agreement with or order by EPA, commences performance of such Work, or (2) sixty (60) days from the date of Respondents' receipt of the Takeover Notice, whichever is less; and
  - (b) oversight costs incurred prior to Respondents' receipt of the Takeover Notice.
- (2) Unless otherwise provided in the Takeover Notice, Respondents shall not be released from its obligations under this Consent Order to perform any Work required by this

Consent Order other than the Takeover Work and shall remain subject to stipulated penalties and responsible for reimbursement of oversight costs relating to all such Work.

#### **IX. SUBMISSIONS REQUIRING EPA APPROVAL**

- A. After review of any plan, report, or other document submitted for EPA approval pursuant to this Consent Order ["Submission"], EPA may: (1) approve, in whole or in part, the Submission; (2) approve the Submission upon specified conditions; (3) modify and approve the Submission to cure the deficiencies; (4) direct Respondents to modify the Submission; (5) disapprove, in whole or in part, the Submission; (6) disapprove the Submission as substantially deficient; or (7) any combination of the above.
- B. In the event EPA approves the Submission in whole, Respondents shall take all actions required by the Submission. In all other cases, Respondents shall take all actions required by portions of the Submission which are approved by EPA.
- C. Except as otherwise provided in paragraph D of this Section, Respondents shall, upon receipt of a notice of disapproval or notice requiring modification of the Submission, correct the deficiencies and resubmit the Submission for approval within fourteen (14) days of such receipt or such other time as may be specified by EPA in the notice.
- D. In the event that (1) any Submission is disapproved by EPA as substantially deficient, or (2) a resubmitted Submission, or portion thereof, is disapproved by EPA, Respondents shall be in violation of this Consent Order. EPA may, under such circumstances, conduct a complete FFS, or any portion thereof, and seek reimbursement of its costs; take any action described in paragraph A of this Section; and/or seek any other appropriate relief.
- E. All Submissions, or portions thereof, shall, upon approval by EPA, be enforceable as requirements of this Consent Order.
- F. No failure by EPA to approve, disapprove, or otherwise respond to a Submission shall be construed as an approval of such Submission. EPA intends to use best efforts to respond to all submissions in an expeditious manner.



## **X. PUBLIC COMMENT**

EPA may select a new remedial action for implementation at OUI of the Site in accordance with CERCLA and the NCP. The administrative record file for the proposed remedial action, including the FFS Report, and documents considered by EPA in developing the Proposed Plan, will be available for public review and comment pursuant to 40 C.F.R. § 300.430. Following the public review and comment period, EPA will notify the Respondent of the remedial action alternative(s) selected by EPA for implementation at the Site.

## **XI. DESIGNATED PROJECT MANAGERS**

- A. Within seven (7) days of the effective date of this Consent Order, EPA and the Respondents shall each designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to this Consent Order, shall be directed to the Project Managers by controlled or certified mail, with copies to such other persons as EPA and Respondents may respectively designate.
- B. EPA and the Respondents shall each have the right to change their respective Project Manager(s). Such change shall be accomplished by notifying each other in writing at least seven (7) days prior to the change.
- C. EPA's Project Manager shall have the authorities specified in 40 C.F.R. §§ 300.120 and 300.430 and shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.415.
- D. The absence of the EPA Project Manager from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.
- E. On or before the effective date of this Consent Order, EPA will arrange for a qualified person to assist it in overseeing and reviewing the conduct of the FFS as required by section 104(a) of CERCLA, 42 U.S.C. § 9604(a) ["Oversight

Representatives"] .

## XII. SITE ACCESS

- A. To the extent that property included in the area under study pursuant to this Consent Order is presently owned or controlled by parties other than Respondents, the Respondents shall use best efforts to obtain Site access agreements from the present owners as soon as possible but no later than fifteen (15) days of receipt of approval of the Work Plan. Such agreements shall provide reasonable access as detailed in paragraph C of this Section, for performance of FFS activities for EPA, its authorized representatives, Oversight Representatives, representatives of the State, and the Respondents and their authorized representatives. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall so notify EPA, in writing and within ten (10) calendar days, of all efforts undertaken to obtain access agreements as required by this Consent Order. EPA, solely in its discretion, may then take steps to obtain such access.
- B. Best efforts, as used in this Section shall include, but shall not be limited to, a certified letter from Respondents to the present owners of such property requesting access agreements to permit Respondents and EPA and their authorized and designated representatives to access such property.
- C. EPA and the State and their authorized and designated representatives shall have the authority to enter and freely move about all property owned or controlled by Respondents subject to this Consent Order at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. In addition, EPA and/or its representatives shall have, for the purposes specified above, the authority to enter, at all reasonable times, all areas at which records related to the performance of the FFS are retained. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Confidentiality

claims for any material so copied may be asserted in accordance with Section XIV of this Consent Order. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Federal law.

- D. In the event that EPA takes over the work pursuant to this Consent Order, Respondents agree to allow EPA and its authorized representatives access to all portions of the Site to which they have access for the purpose of conducting the FFS and performance of activities identified in paragraph C of this Section.
- E. If Respondents acquire title to or control over any portion of the Site to which they do not presently hold title or control, Respondents agree that EPA shall have access rights to such property as specified in this Section.

### **XIII. QUALITY ASSURANCE**

- A. While conducting sampling and analysis pursuant to this Consent Order, the Respondents shall implement quality assurance, quality control, and chain of custody procedures including, but not limited to, those described in:
  - 1. "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive No. 9355.3-01 (1988));
  - 2. "EPA NEIC Policies and Procedures Manual" (No. EPA 330/978-001-R (revised November 1984));
  - 3. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plan" (No. QAMS-005/80 (December 1980));
  - 4. "A Compendium of Superfund Field Operations Methods" (OSWER Directive No. 9355-0-14 (December 1987));
  - 5. "Data Quality Objectives for Remedial Response Activities" (OSWER Directive No. 9355.0-7B (March 1987)); and
  - 6. Technical direction received from EPA at the meeting(s) described in Section VIII.F of this Consent Order.
- B. The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved

Work Plan. Further, as set forth in Section VIII of this Consent Order, Respondents shall not commence sampling until EPA approves of the Work Plan.

- C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondents shall at a minimum:
1. Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80;
  2. Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(s), records, and personnel utilized by the Respondents for analysis of samples collected pursuant to this Consent Order.
  3. Prepare a Quality Assurance Project Plan ["QAPjP"] for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Manager for review and approval prior to initiating any field investigations. The QAPjP and Field Sampling Plan ["FSP"] must be submitted to EPA as part of the Sampling and Analysis Work Plan required in Section VIII.C.2 of this Consent Order. The purpose of the plan is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. The guidances referenced in paragraph A of this Section shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.
  4. Ensure that the laboratory(s) analyzing samples required by this Consent Order use the methods and submit deliverables delineated in the current "Statement of Work" for the EPA Contract Lab Program (current copies are available from the Environmental Services Division QA Section, Annapolis, Maryland [(410) 573-6837]). If any parameter to be analyzed for is not one of the parameters for which CLP methods are available, or with respect to non-CLP samples as provided in paragraph C.9 of this Section, the laboratory shall use methods which are EPA-approved (and which are to be described in the QAPjP).
  5. Except with respect to non-CLP samples as provided in paragraph C.9 of this Section, ensure that the laboratory(s) analyzing samples pursuant to this Consent

Order agrees to demonstrate its capability to perform analysis in compliance with Contract Lab Program requirements through the analysis of Performance Evaluation ["PE"] samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Manager for verification.

6. Conduct an audit of the laboratory(s) that will analyze samples from the Site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Manager within fifteen (15) days of completion of the audit. The Respondents must report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondents knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ["CLP" Labs] need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Manager within fifteen (15) days of completion of the audit. Respondents must report deficiencies and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondents knew or should have known of the deficiency.
8. Provide data validation of analyses done by the laboratory(s) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols the

Respondents must establish validation criteria such as those in 40 C.F.R. Part 136, Appendix A. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Manager at the time sample results are provided to EPA.

9. Respondents shall be permitted to use non-CLP methods and procedures only as provided in "Data Quality Objectives for Remedial Response Activities" (OSWER Directive No. 9355.0-7B (March 1987)).
- D. In the event that the Respondents fail to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete FFS or any portion thereof pursuant to its authority under CERCLA and the NCP and to seek reimbursement from the Respondent for the costs thereof and/or to seek any other appropriate relief.

#### **XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

- A. The Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by the Respondents, or on the Respondents' behalf, with respect to the implementation of this Consent Order, and shall submit all such results no later than the date that the next monthly progress report is due.
- B. At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondents pursuant to the approved Work Plan. The Respondents shall notify EPA not less than thirty (30) days in advance of any such sample collection activity.
- C. The provisions of 40 C.F.R. Part 300, Subpart I, shall govern the contents of the administrative record file. Respondents shall submit to EPA all documents developed during the course of the FFS upon which selection of the response action may be based. Respondents shall, on or before the date of submission of the final FFS Report, submit to EPA all documents and information which Respondents wish EPA to consider in the development of the Proposed Plan.
- D. At the request of EPA, Respondents shall provide any of the raw data and/or field notes under their custody or control relating to samples taken at the Site within thirty (30) days

of receipt of such request.

- E. All data, factual information, and documents submitted by the Respondents pursuant to this Consent Order shall be subject to public inspection unless at the time of submission Respondents assert a confidential business information or trade secret claim pursuant to applicable Federal law. Except as provided below, Respondents may assert such a claim covering information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to such a claim of confidentiality will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondents. Respondents shall not assert a claim of confidentiality over physical, sampling, monitoring, or analytical data or the FFS Report.
- F. Nothing in this Order shall limit EPA's information gathering authority under Federal law.

#### **XV. RECORD PRESERVATION**

- A. The Respondents agree to preserve, during the pendency of this Consent Order and for a minimum of six (6) years after Respondents' receipt of the Notice of Completion issued pursuant to Section XXVIII.B of this Consent Order, all records and documents in their possession or in the possession of any of their divisions, officers, directors, employees, agents, contractors, consultants, successors, and assigns that relate in any way to implementation of this Consent Order, or to hazardous substance management and/or disposal at the Site, including raw data, despite any document retention policy to the contrary. Respondents will use their best efforts to obtain copies of all such documents in the possession of their employees, agents, accountants, contractors, or attorneys. Such records and documents may be retained in any electronic or film media which preserves the records and documents and any notations thereon, provided that such records and documents can be transferred to a media or format in use by EPA at such time copies of such records or documents are requested by EPA. After this six-year period, the Respondents shall notify EPA at least sixty (60) calendar days prior to

- the destruction of any such documents. EPA will then provide written notification to Respondents whether or not EPA wants to take possession of such documents. Upon request by EPA, the Respondents shall provide EPA with the opportunity to take possession of any such documents.
- B. Within thirty (30) days of the effective date of this Consent Order, Respondents shall designate a custodian for all documents required to be preserved pursuant to paragraph A of this Section ("Custodian") and shall notify EPA of the identity of that Custodian. Respondents may change their Custodian upon written notification to EPA of such change.
- C. Any agreement between Respondents and an agent, contractor, or consultant relating to performance of work under this Consent Order shall require in writing that said agent, contractor, or consultant maintain and preserve during the pendency of this Consent Order, and for a minimum of six (6) years after its termination, all data, records, and documents within its respective possession which relate in any way to implementation of this Consent Order or to hazardous substance management and/or disposal at the Site.
- D. Respondents shall not destroy any records relating to this Consent Order, other than the routine destruction of draft documents, until notified by EPA, in accordance with this Section, that EPA has waived its right to obtain such records from Respondents.

#### **XVI. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

- A. For each day or any portion thereof that Respondents fail to submit a report or document or otherwise fails to comply with the requirements of this Consent Order at the time and in the manner set forth herein (including all documents submitted hereunder and approved by EPA), Respondents shall be liable for and Respondents shall pay, upon demand by EPA, the sums set forth below as stipulated penalties to EPA. Payment shall be due and owing within thirty (30) days from receipt of EPA's demand letter. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty-day period in conformance with 40 C.F.R. § 13.11(a).



- B. Checks in payment of stipulated penalties shall be made payable to the Hazardous Substance Superfund and shall be addressed to:

EPA--Hazardous Substances Superfund  
U.S. EPA, Region III  
ATTENTION: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

All payments shall reference the name of the Site, the Respondents' names and addresses, and the EPA docket number of this Consent Order. Copies of the transmittal letter and check shall be sent simultaneously to the EPA Project Manager and to the:

Regional Hearing Clerk (3RC00)  
U. S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107

- C. Stipulated penalties shall accrue in the amount of \$1500 per day for the first week, and \$2500 per day for each day thereafter.
- D. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order.
- E. All penalties and interest shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance. EPA may, in its discretion, forego demand for payment of any stipulated penalty under this Section, or may delay demand for such stipulated penalty until such time as EPA deems appropriate. Exercise of EPA's discretion under this Section shall not be subject to dispute resolution under this Consent Order.
- F. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

- G. If the Respondents in good faith object to the imposition of stipulated penalties, they may invoke the dispute resolution procedures under Section XVIII of this Consent Order. Respondents shall not dispute stipulated penalty rates established in paragraph C of this Section. To the extent Respondents do not prevail upon resolution of the dispute, Respondents shall pay the penalties owed within thirty (30) days of receipt of notice of the resolution of the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute.
- H. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Respondents' obligation to comply with the requirements of this Consent Order.

**XVII. FORCE MAJEURE AND NOTIFICATION OF DELAY**

- A. 1. A failure by Respondents to comply with any requirement of this Consent Order in the manner or in the time required by this Consent Order ("Compliance Failure") shall constitute a violation of this Consent Order unless such Compliance Failure has resulted from a Force Majeure Event within the meaning of paragraph B of this Section. To the extent that a delay is caused by a Force Majeure Event, the schedule for performance of work affected by the delay will be extended by EPA for the time necessary to complete such work on an expedited basis, up to the period of the delay directly resulting from the Force Majeure Event. Except as may be specifically provided by EPA, no such schedule extension shall affect the schedule for completion of any other tasks required by this Consent Order.
2. A Force Majeure Event is any event which EPA agrees:
- (a) arises from causes not reasonably foreseeable and beyond the control of Respondents, and
  - (b) results in delays or prevents performance by a date or manner required by this Consent Order,
- provided that Respondents have used best efforts to perform as required by this Consent Order. "Best

efforts" as used in this Paragraph shall include, but not be limited to, efforts to expedite the performance of activities in order to minimize delays to the extent practicable. Neither increased costs of performance; changed economic circumstances; difficulties caused by reasonably foreseeable weather conditions which could have been overcome by best efforts; nor failure to obtain Federal, State, or local permits shall be considered a Force Majeure Event.

3. Respondents shall have the burden of proving that a Force Majeure Event has occurred.
- B. The Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible but no later than three (3) business days after Respondents or any of their agents or contractors become aware of such delay, or through the exercise of due diligence should have become aware of such delay, and in writing no later than seven (7) days after Respondents or any of their agents or contractors become aware, or through the exercise of due diligence should have become aware, of such a delay or anticipated delay. The written notification shall describe fully the nature of the delay; the reasons the delay is beyond the control of Respondents (if applicable); the actions that will be taken to mitigate, prevent, and/or minimize further delay; the anticipated length of the delay; and the timetable according to which the actions to mitigate, prevent, and/or minimize the delay will be taken. The Respondents shall adopt all reasonable measures to avoid and minimize any such delay. Failure of the Respondents to comply with the notice requirements of this Section shall constitute a waiver of the Respondents' right to invoke the benefits of paragraph A of this Section with respect to that event.
- C. In the event that EPA and the Respondents cannot agree that a particular delay in achieving compliance with the requirements of this Consent Order has been or will be caused by a Force Majeure Event, the dispute shall be resolved in accordance with the provisions of Section XVIII of this Consent Order. The Respondents shall have the burden of proving that the delay was caused by a Force Majeure Event.
- D. Modifications to this Consent Order following a Force Majeure Event shall be made in accordance with Section XXVI of this

Consent Order.

### **XVIII. DISPUTE RESOLUTION**

- A. The resolution of any dispute between EPA and Respondents concerning this Consent Order shall be conducted in accordance with this Section.
- B.
  - 1. If the Respondents object to any EPA notification or action under this Consent Order, the Respondents shall notify EPA in writing of their objection(s) within fourteen (14) days of such action or receipt of such EPA notification.
  - 2. The written notification of objections from Respondents referred to in paragraph B.1 of this Section ["Notice of Dispute"] shall identify the issue(s) in dispute, the position Respondents maintain should be adopted by EPA, the basis for Respondents' position, and any matters Respondents consider necessary for EPA's determination.
  - 3. Except as provided herein, EPA and the Respondents shall have fourteen (14) days from EPA's receipt of the Notice of Dispute to resolve the dispute. As to any issue for which agreement is not reached during this period, EPA will provide a written statement of its decision to Respondents ("EPA Resolution Notice"). The EPA Resolution Notice shall be signed by the Chief, Superfund Remedial Branch. EPA may extend the fourteen (14) day period up to an additional fourteen (14) days if EPA determines that more time is necessary for resolution. Respondents shall not invoke this Section to object to a EPA Resolution Notice.
  - 4. Following resolution of the dispute by agreement (in the event the dispute has been resolved by agreement) or Respondents' receipt of the EPA Resolution Notice (in the event EPA and Respondents are unable to reach agreement), Respondents shall perform the work that was the subject of the dispute in accordance with the agreement (if applicable) or the EPA Resolution Notice.
- C. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall

constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Consent Order.

- D. Neither invocation of the procedures set forth in this Section, nor EPA's consideration of matters placed into dispute, shall excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.
- E. The existence of a dispute under this Section shall not by itself expand the time frame for completing any work under this Consent Order. Thus, in the event the Respondents prevail in the dispute, the task must be completed in the remaining amount of time originally specified in the Consent Order unless the time frame is formally modified by EPA. Any such modifications to this Consent Order shall be made in accordance with Section XXVI of this Consent Order.
- F. The accrual of stipulated penalties shall continue notwithstanding the existence of a dispute or invocation of the procedures set forth in this Section.
- G. In order to prevail in any dispute concerning costs under Section XX of this Consent Order, Respondents shall have the burden of proving that such costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

#### **XIX. RESERVATION OF RIGHTS**

- A. Except as expressly provided in this Consent Order:
  - (1) Each party reserves all rights and defenses it may have;
  - (2) Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order; to seek injunctive relief; to seek imposition of statutory penalties, fines, and/or punitive damages; or any other appropriate relief; and
  - (3) Respondents expressly reserve all claims, if any, they may have against the United States as an alleged potentially responsible party for the actions of federal

agencies (other than EPA) in connection with those federal agencies' alleged dealings in connection with the Site. The United States reserves the right to contest or defend against such claims.

Nothing in this Consent Order shall affect EPA's response authorities including, but not limited to, EPA's right to seek injunctive relief, stipulated penalties, statutory penalties, punitive damages, and/or reimbursement of response costs.

- B. Compliance by Respondents with the terms of this Consent Order shall not relieve Respondents of their obligation to comply with applicable local, State, or Federal laws and regulations.
- C. As provided by this Consent Order, EPA expressly reserves its right to disapprove of actions taken by the Respondents pursuant to this Consent Order and work performed by the Respondents, and reserves its right to request that the Respondents perform response actions in addition to those required by this Consent Order if it determines that such actions are necessary. In the event that Respondents choose to perform such additional tasks, the approved Work Plan shall be reviewed and revised accordingly and the schedule for completion of the work set forth in the Work Plan shall be extended to the extent necessary to accommodate the performance of additional tasks. In the event that the Respondents decline to perform such additional actions, EPA reserves the right to undertake such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP, to seek reimbursement for any costs incurred, and/or to seek any other appropriate relief, including requiring Respondents to perform such actions. Further, EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs, including oversight costs, incurred by the United States at the Site not reimbursed by the Respondents.
- D. If EPA requests, Respondents shall incorporate and integrate information supplied by EPA into the final FFS report.

## XX. REIMBURSEMENT OF COSTS

- A. Following each annual anniversary date of this Order, EPA will submit to the Respondents a summary report of response costs, including oversight costs, paid by the U.S. Government in connection with this Consent Order. Oversight costs shall include administrative, enforcement, inspection, and investigative costs paid by EPA, its agents, or contractors in connection with EPA's oversight of the work performed by the Respondents under the terms of this Consent Order and shall include, but not be limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, costs of compiling cost documentation, compliance monitoring, collection and analysis of split samples, inspection of FFS activities, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, and review and approval or disapproval of reports.
- B. The amount identified in the summary report provided under paragraph A of this Section shall be due and payable by Respondents no later than thirty (30) calendar days of receipt of such summary report. Respondents shall, within thirty (30) calendar days of receipt of the summary report from EPA, remit a check for the amount of those costs made payable to the Hazardous Substances Superfund. Interest shall begin to accrue on the unpaid balance from that date, even if there is a dispute or an objection to any portion of the costs. Checks should specifically identify the site name and be forwarded to:

EPA--Hazardous Substances Superfund  
U.S. EPA, Region III  
ATTENTION: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

A copy of the transmittal letter and check shall be sent to the EPA Project Manager and to the EPA Region III Regional Hearing Clerk at the address specified in Section XVI.B of this Consent Order.

## **XXI. OTHER CLAIMS**

- A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.
- B. This Consent Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- C. By consenting to the issuance of this Consent Order, the Respondents waive any claim to reimbursement for all work performed and expenses incurred under this Consent Order it may have under section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

## **XXII. OTHER APPLICABLE LAWS**

- A. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations.
- B. Except as provided herein, Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment of hazardous substances. The requirements of this paragraph shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.
  - 1. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous



substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide all relevant information on the off-site shipments, including information under the categories noted in paragraph B.1 of this Section, as soon as practical after the award of the contract and at least fourteen (14) days before the hazardous substances are actually shipped.

#### **XXIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

Respondents agree to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondents or their agents, independent contractors, receivers, trustees and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondents or the United States under their various contracts. Respondents expressly decline to indemnify the United States for all claims, if any, against the United States as an alleged potentially responsible party at the Site for its actions in connection with any federal agencies' alleged dealings in connection with the Site.

#### **XXIV. LIABILITY OF THE UNITED STATES GOVERNMENT**

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, or of their employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Consent Order, nor shall the United States Government or any

agency thereof be held as a party to any contract entered into by Respondents in carrying out activities pursuant to this Order.

#### **XXV. MISCELLANEOUS**

- A. Except as otherwise provided in this Consent Order, the term "days" shall mean calendar days. If a due date for any task or deliverable falls on a Federal holiday or weekend, the due date for that task or deliverable shall be the next working day.
- B. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and the State immediately. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondents shall perform the Work Plan as modified or amended.

#### **XXVI. SUBSEQUENT MODIFICATION**

- A. This Consent Order may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA.
- B.
  - 1. Minor modifications to the requirements of the Work Plan, specifically those which do not materially or significantly affect the nature, scope, or timing of the work to be performed, may be made by mutual agreement of the Project Managers. Any such modifications must be in writing and signed by both Project Managers. The effective date of the modification shall be the date on which the letter from EPA's Project Manager is signed.
  - 2. Modifications to the requirements of the Work Plan that are not minor modifications as described in paragraph B.1 of this Section may be made by mutual agreement of EPA

and the Respondents. Any such modifications must be in writing and signed by Respondents' Project Manager and the Chief of the General Remedial Section within the Remedial Branch of the Region III Hazardous Waste Management Division or a successor section. The effective date of the modification shall be the date on which the modification is signed by EPA.

- C. Respondents agree that any request for modification of this Consent Order shall be accompanied by a statement of how such modification shall affect the Work Plan schedule.
- D. Following EPA approval of a modification to a schedule, Respondents agree, within thirty (30) days of receipt of the modification, to supply to EPA a revised Work Plan schedule and accompanying charts which shall reflect the approved modifications to such schedule.
- E. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order and any modifications thereto are, upon approval by EPA, enforceable as requirements of this Consent Order. Any non-compliance with such EPA-approved or modified reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and shall subject the Respondents to, among other things, the requirements of Section XVI of this Consent Order.
- F. No informal advice, guidance, suggestions, or comments by EPA, other than a formal approval as specified in Section XXVI.A or .B of this Consent Order, regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents or regarding any other requirement of this Consent Order will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Consent Order, and to comply with requirements of this Consent Order, unless formally modified.

#### **XXVII. EFFECTIVE DATE**

The effective date of this Consent Order shall be three (3) business days following the date on which EPA forwards a fully executed true and correct copy to Respondents.

### **XXVIII. NOTICE OF COMPLETION**

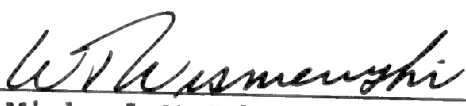
- A. When Respondents believes that (1) the FFS has been fully performed in accordance with the requirements of this Consent Order, (2) all costs reimbursable under Section XX of this Consent Order have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, Respondents shall so notify EPA in writing ("Respondents' Completion Petition").
- B. If, following receipt of Respondents' Completion Petition, EPA determines that (1) the FFS has been fully performed in accordance with the requirements of this Consent Order, (2) all costs reimbursable under Section XX of this Consent Order have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, EPA shall so notify Respondents in writing ("Notice of Completion"). EPA issuance of a Notice of Completion shall not alter or affect any provision of this Consent Order including, without limitation, Sections XV (Record Preservation), XIX (Reservation of Rights), XXI (Other Claims), XXIII (Indemnification of the United States Government), and XXIV (Liability of the United States Government).
- C. If EPA does not agree that (1) the FFS has been fully performed in accordance with the requirements of this Consent Order, (2) all costs reimbursable under Section XX of this Consent Order have been paid to EPA, or (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, EPA shall notify Respondents in writing of the activities that must be undertaken to complete such work. If applicable, EPA will set forth a schedule for performance of such activities consistent with this Consent Order or may require Respondents to submit a schedule for EPA approval. Respondents shall perform all activities described in EPA's notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to Respondents' right to invoke dispute resolution under Section XVIII of this Consent Order, and shall submit a Completion Petition to EPA in accordance with paragraph A of this Section.

**XXIX. SUSPENSION OF REQUIREMENTS UNDER ADMINISTRATIVE  
ORDER NO. III-90-27-DC**

Pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA hereby suspends all requirements under Administrative Order No. III-90-27-DC issued by EPA on June 20, 1990 ("1990 Order") until further notice. Such suspension of requirements may be lifted at any time upon notice from the Chief of the Remedial Branch within the Office of Superfund Programs, Region III Hazardous Waste Management Division, or his/her authorized representative. Such notice shall be effective upon receipt by the Project Coordinator designated, pursuant to Section VIII.A of the 1990 Order, by the Respondents to that Order. A decision by EPA to lift the suspension of the 1990 Order requirements pursuant to this Section shall not be subject to dispute resolution under this Consent Order.

**IT IS SO AGREED AND ORDERED:**

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
\_\_\_\_\_  
W. Michael McCabe  
for Regional Administrator  
EPA Region III

10/1/97  
Date

**FOR THE RESPONDENTS:**

Each of the undersigned hereby certifies that he or she is authorized to execute this Consent Order on behalf of the Respondent for whom he or she is signing and to bind such Respondent to the terms and conditions herein:

**OLIN CORPORATION:**

ccm  
9/26/97 Curt M. Richards 9/26/97  
[Signature] Date

Print Name: Curt M. Richards

Title: Corporate Director, Environmental Health, & Safety

**ROCKWELL INTERNATIONAL CORPORATION:**

\_\_\_\_\_  
[Signature] Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR THE RESPONDENTS:**

Each of the undersigned hereby certifies that he or she is authorized to execute this Consent Order on behalf of the Respondent for whom he or she is signing and to bind such Respondent to the terms and conditions herein:

**OLIN CORPORATION:**

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**[Signature]**

---

**Date****Print Name:** \_\_\_\_\_**Title:** \_\_\_\_\_**ROCKWELL INTERNATIONAL CORPORATION:**

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**[Signature]**

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**Date****Print Name:** GARY BALLESTEROS**Title:** ASSISTANT GENERAL COUNSEL

EPEC POLYMERS, INC:

Wayne B. Allred Sept. 29, 1997  
[Signature] Date

Print Name: WAYNE B. ALLRED  
Title: VICE PRESIDENT AND TREASURER

GENERAL ELECTRIC COMPANY:

\_\_\_\_\_  
[Signature] Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



EPEC POLYMERS, INC:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
Date

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

GENERAL ELECTRIC COMPANY:

  
\_\_\_\_\_  
[Signature]

9/3/97  
Date

Print Name: \_\_\_\_\_

Douglas A. Johns

Title: \_\_\_\_\_

Sr. Counsel for GE Specialty Chemicals, Inc.